

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

12-003-O

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE GRANT OF AN EASEMENT ALONG WITH THE DULUTH AIRPORT AUTHORITY, AS GRANTORS, IN FAVOR OF MINNESOTA POWER (LEGALLY INCORPORATED AS ALLETE) FOR UNDERGROUND ELECTRICAL UTILITY PURPOSES.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That the proper city officials are hereby authorized to grant, along with the Duluth Airport Authority, as grantors, an easement substantially in the form of that on file in the office of the city clerk as Public Document No. _____, across, under or through the following described property in St. Louis County, Minnesota, for underground electrical utility purposes, the grant of said easement being subject to receipt of a release of easement substantially in the form of that on file in the office of the city clerk as Public Document No. _____:

A 10.00 foot easement across, under or through part of Section 1, Township 50 North, Range 15 West of the Fourth Principal Meridian, St. Louis County, Minnesota. The center line of said easement is described as follows:

Commencing at the southeast corner of said Section 1; thence North 00 degrees 49 minutes 10 seconds West, bearing based on Minnesota North State Plane, along the east line of said Section 1, a distance of 772.10 feet; thence South 89 degrees 10 minutes 50 seconds West, at a right angle, a distance of 33.00 feet to the intersection with the west right-of-way line of County road No. 966, said intersection being the beginning of the center line to be described; thence North 31 degrees 46 minutes 39 seconds West a distance of 46.90 feet; thence North 01 degrees 11 minutes 45 seconds East a distance of 53.60 feet; thence North 65 degrees 44 minutes 12 seconds East a distance of 24.20 feet to the intersection with the west right-of-way line of said County Road No. 966, and said center line there terminating.

Together with a 10.00 foot easement for utility purposes across, under or through the above described property. The center line of said easement

is described as follows:

Commencing at the terminus of the above described line; thence North 00 degrees 49 minutes 10 seconds West along the west right-of-way line of said County Road No. 966 a distance of 1121.02 feet to the point of beginning of the center line to be described hereon;

thence North 05 degrees 30 minutes 32 seconds West a distance of 60.66 feet;
thence North 70 degrees 59 minutes 09 seconds West a distance of 21.49 feet;
thence South 87 degrees 43 minutes 44 seconds West a distance of 50.97 feet;
thence North 82 degrees 20 minutes 46 seconds West a distance of 188.80 feet;
thence South 85 degrees 30 minutes 31 seconds West a distance of 247.71 feet;
thence North 57 degrees 35 minutes 09 seconds West a distance of 149.81 feet;
thence North 85 degrees 27 minutes 51 seconds West a distance of 303.59 feet;
thence North 74 degrees 23 minutes 55 seconds West a distance of 113.03 feet;
thence North 77 degrees 51 minutes 01 seconds West a distance of 328.66 feet;
thence North 64 degrees 29 minutes 25 seconds West a distance of 405.54 feet;
thence North 58 degrees 24 minutes 57 seconds West a distance of 171.89 feet;
thence North 53 degrees 59 minutes 51 seconds West a distance of 200.69 feet;
thence North 80 degrees 53 minutes 55 seconds West a distance of 468.59 feet;
thence North 78 degrees 08 minutes 36 seconds West a distance of 276.13 feet;
thence North 87 degrees 35 minutes 10 seconds West a distance of 356.70 feet;
thence North 89 degrees 45 minutes 26 seconds West a distance of 131.17 feet;
thence North 84 degrees 34 minutes 46 seconds West a distance of 212.13 feet;
thence North 20 degrees 25 minutes 52 seconds West a distance of 210.64 feet;
thence South 70 degrees 59 minutes 27 seconds West a distance of 333.80 feet;
thence North 26 degrees 26 minutes 23 seconds West a distance of 71.77 feet;
thence South 61 degrees 32 minutes 04 seconds West a distance of 117.30 feet;
thence North 87 degrees 09 minutes 57 seconds West a distance of 38.81 feet;
thence North 68 degrees 18 minutes 03 seconds West 19.44 feet; thence North 26 degrees 44 minutes 54 seconds West a distance of 43.91 feet; thence North 79 degrees 50 minutes 39 seconds East a distance of 18.55 feet; thence North 01

degrees 49 minutes 08 seconds West a distance of 33.19 feet; thence North 21 degrees 13 minutes 59 seconds West a distance of 211.72 feet; thence North 18 degrees 43 minutes 32 seconds West a distance of 288.13 feet; thence North 20 degrees 58 minutes 03 seconds West a distance of 32.35 feet; thence northerly a distance of 214.00 feet, along a tangential curve concave to the East, having a radius of 186.00 feet and a central angle of 65 degrees 55 minutes 20 seconds; thence North 44 degrees 57 minutes 17 seconds East a distance of 161.49 feet; thence northeasterly a distance of 234.63 feet, along a tangential curve concave to the Northwest, having a radius of 993.79 feet and a central angle of 13 degrees 31 minutes 39 seconds; thence North 31 degrees 25 minutes 37 seconds East a distance of 277.07 feet; thence North 18 degrees 16 minutes 37 seconds East a distance of 51.70 feet; thence North 70 degrees 50 minutes 55 seconds East a distance of 54.95 feet; thence South 39 degrees 01 minutes 35 seconds East a distance of 6.01 feet; thence North 32 degrees 16 minutes 19 seconds East a distance of 79.87 feet; thence North 48 degrees 52 minutes 56 seconds East a distance of 102.00 feet; thence South 89 degrees 25 minutes 21 seconds East a distance of 69.44 feet; thence North 74 degrees 57 minutes 18 seconds East a distance of 31.02 feet; thence North 85 degrees 23 minutes 16 seconds East a distance of 81.68 feet; thence North 71 degrees 05 minutes 13 seconds East a distance of 225.43 feet; thence South 22 degrees 07 minutes 08 seconds East a distance of 271.99 feet, and said center line there terminating.

Section 2. That this ordinance shall take effect 30 days after its passage and publication.

Approved:


Department Director

Approved for presentation to council:


Chief Administrative Officer

Approved as to form:


Attorney

Approved:


Auditor

PLNG/ATTY JMC:dma 01/03/2012

STATEMENT OF PURPOSE: This ordinance authorizes the grant of an easement by the City along with the Duluth Airport Authority for underground electrical utility purposes to accommodate the electrical power line that has been constructed to serve the North Business Development Area at the Duluth International Airport ("DIA"). The new easement includes additional areas of the DIA covered by a previous easement. The new easement is granted subject to the previous easement being released by Minnesota Power.

EASEMENT

THIS INDENTURE, is made this _____ day of _____, 2012, by and between the CITY OF DULUTH, a municipal corporation under the laws of the State of Minnesota and the DULUTH AIRPORT AUTHORITY, a governmental body organized and existing under Chapter 577 of the Laws of Minnesota 1969, as Grantors, and MINNESOTA POWER (legally incorporated as ALLETE, Inc., a Minnesota corporation), as Grantee.

For and in consideration of the conditions, covenants and agreements hereof to be kept and performed by Grantee, Grantors do hereby grant unto Grantee, its successors and assigns, forever, a nonexclusive easement for underground electrical utility purposes including surveying, constructing, operating and maintaining electric power or communication lines or cables consisting of conduits, counterpoises, fixtures and other devices used or useful in the operation and maintenance of said lines or cables (hereinafter "Lines") across, under or through the following described lands situated in St. Louis County, Minnesota; to-wit:

For legal description see registered survey drawing labeled "Exhibit A" and dated November 15, 2010 by Craig P. LaTulip of Carlson Professional Services, 1011 East Central Entrance, Suite 100, Duluth, MN 55811, attached hereto and made a part hereof. Subject to prior easements, reservations and rights of record (hereinafter the "Premises").

The grant of easement herein contained shall also include the right of Grantee to have reasonable access to the Premises across the property of Grantors adjacent thereto in compliance with 49 CFR 1540 and 1542, which access shall be coordinated with the Director of Operations of the Duluth Airport Authority.

Grantee shall not disturb or remove from the Premises any structures on the Premises including but not limited to access roads, taxiways, runways and/or fences without the prior written permission of the Executive Director of the Duluth Airport Authority. Grantee shall pay for all damages to roads, taxiways, runways and fences caused by the construction or maintenance of the Lines.

Grantee shall be responsible for all installation, extension, maintenance, repair or removal work related to the Lines as needed, based on generally accepted industry standards for electrical transmission and distribution facilities. Grantee agrees that after completion of any installation, extension, maintenance, repair or removal work related to the Lines that all rubbish, waste, debris, equipment and tools shall be cleared away and the Premises left in a neat and orderly condition and in a condition which will not result in attracting migratory birds such as leaving open water or garbage; and Grantee agrees that it shall at all times keep its Lines in good repair and safe condition.

Grantee agrees to pay promptly and before delinquency any and all taxes and assessments which may be levied or assessed upon its Lines, or upon any or all of the Premises on account of the existence or use of its Lines thereon, and to protect and keep the Premises free from any mechanics' or other liens, charges or liabilities due to the ownership, construction or operation by Grantee of its Lines.

Grantee agrees to defend and fully indemnify and hold the Grantors harmless from any and all losses, causes of action, expenses and damages of whatsoever nature or kind by reason of having granted this easement, or on account of any act or omission of Grantee or any of its agents, servants or employees in connection with the rights herein granted. There is no intent hereby to create any contractual obligation for the benefit of third persons.

It is understood that the right, privilege, and easement hereby granted shall extend only to the interest or interests of the Grantee herein named; and the provisions hereof shall extend to and bind the heirs, executors, administrators, successors, and assigns of the respective parties hereto.

It is mutually understood and agreed that this instrument covers all of the agreements and stipulations between the parties with respect to the subject matter hereof and that no representation or verbal statements have been made modifying, adding to, or changing the terms hereof.

This instrument is exempt from payment of state deed stamps pursuant to Minnesota Statutes Section 287.22.

City of Duluth

Duluth Airport Authority

By: _____
Donald Ness, Its Mayor

By: _____
John Eagleton, Its President

Attest: _____
Jeffrey J. Cox, Its City Clerk

By: _____
Michael G. Lundstrom, Its Secretary

State of Minnesota)
) ss.
County of St. Louis)

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by Donald Ness, Mayor and Jeffrey J. Cox, City Clerk, of the City of Duluth, a municipal corporation under the laws of the State of Minnesota, on behalf of the corporation.

Notary Public

State of Minnesota)
) ss.
County of St. Louis)

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by John M. Eagleton, President and Michael G. Lundstrom, Secretary, respectively of the Duluth Airport Authority, a governmental body organized and existing under Chapter 577 of the Laws of Minnesota 1969, on behalf of the authority.

Notary Public

This instrument drafted by:

Joan M. Christensen
Assistant City Attorney
410 City Hall
411 West First Street
Duluth, MN 55801

[illegible]

Together with a 10.00 foot easement for utility purposes across, over, under or through the above described property. The center line of said easement is described as follows:

[illegible]

RELEASE OF EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that MINNESOTA POWER, legally incorporated as ALLETE, Inc., a Minnesota corporation f/k/a Minnesota Power & Light Company, for good and valuable consideration, hereby releases that certain easement dated September 6, 1996, and filed for record in the office of the St. Louis County Recorder on October 2, 1996 as Document No. 670023.

Dated this ____ day of _____, 2012.

MINNESOTA POWER
legally incorporated as ALLETE, Inc.

By _____
Bradley W. Oachs
Its Chief Operating Officer

STATE OF MINNESOTA)
) ss.
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by Bradley W. Oachs, the Chief Operating Officer of Minnesota Power, legally incorporated as ALLETE, Inc., a Minnesota corporation, on behalf of the corporation.

Notary Public

This instrument was drafted by:
Minnesota Power
30 West Superior Street
Duluth, MN 55802